

# **CLINTON TOWNSHIP BOARD OF APPEALS**

## *REPORT OF MEETING*

*FEBRUARY 18, 2009*

PRESENT: Francis Marella, Chairperson  
Michael Nickerson, Vice-Chairperson  
Robert M. Campbell, Secretary  
Michael Deyak  
James D'Angelo  
David Edgar  
Denise C. Trombley

ABSENT: None

STAFF: Carlo Santia, Director  
DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT

The meeting was called to order at 6:30 p.m.

Mr. Marella explained the parameters under which this Board can act and how the public hearing will be conducted. He further explained that, as stipulated in the Township Ordinances, all variances granted by the Board of Appeals are subject to several standard conditions as follows: 1) The petitioner must comply with all applicable requirements of Township ordinances; 2) The project work requiring the variance must be completed within two years of the date that the variance was granted; 3) The project work must be completed substantially in accordance with the plans submitted to the Board of Appeals; and 4) The variance is valid only for the useful life of any structure(s) on the property for which variance is granted.

### **APPROVAL OF AGENDA**

Motion by Mr. Deyak, supported by Mr. Nickerson, to approve the agenda as submitted. Motion carried.

**LOT 34, MORAVIAN ACRES SUBDIVISION (SECTION 21) [FRONTING THE WEST LINE  
OF JOHN P, NORTH OF CIELA]**

-- **APPEAL: SFR – JOHN P, 38235**

**FILE #6318: PETITIONED BY SANDRA J. LETO**

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Pertinent correspondence was read and entered into the record. Mr. Campbell advised that notice of this public hearing was issued by regular mail to owners and/or occupants of property located within 300 feet of the land in question, with none of those returned as undeliverable. He added that there were 49 written replies received in response to the mailing, with most of those forwarded on to the members of this Board for their review prior to this meeting. All of the letters were in support of the variance request, with the exception of one letter that indicated the individual did not have enough knowledge to make a decision but felt the petitioner is entitled to a public hearing.

Ms. Sandra Leto, 38235 John P, Clinton Township, Michigan 48036, thanked those who came to support her and those who wrote letters. She indicated she has been a daycare provider at this location for 16-1/2 years and her home has been inspected by the State of Michigan every two years as part of licensing requirements. Before moving to this location, she stated she checked out Clinton Township's regulations with regard to in-home daycare. Those regulations have changed in the last year, and she complained that there was no democratic process that took place prior to the ordinance going into effect. She claimed that none of the 19 group home providers, licensed by the State of Michigan and residing in Clinton Township, were notified that the ordinance was under consideration of being changed. She felt that, while the cost of mailing would not have been extensive, the results of the ordinance change may have been different. She was confident that safety is everyone's concern, but she can find no evidence to support the Board's decision on prohibiting chain link fences for in-home daycare facilities. She "called all over" and there is no safety issue with a chain link fence. She requested that this Board supply her with all the information on which the Township Board based their decision to change the ordinance. Ms. Leto felt that the required vinyl fencing can actually create more of a dangerous situation. She pointed out that there is a fire hazard, and questioned what would happen if a fire occurred where the only exit was out the back. If the gate was blocked, the only way to safety would be to hand the children over the fence. At her height of 5'2" and her husband's height of 5'9", they would be unable to safely evacuate the children over a 6' fence. Ms. Leto also brought up the issue of a possible intruder lurking in the rear yard. This intruder would not be visible to her neighbors. She pointed out that their neighbors currently see the children in the back yard and see the Leto's interaction with these children. If they see practices they disagree with, they can call the state. She stressed that her children do not climb the fence, nor do they rub their bodies or hands on the fence, so she did not feel there would be any danger of splinters. There is an open feeling in their neighborhood, and they can see their neighbors several houses away. If the children are kept from seeing any activity outside of the rear yard, they are being kept prisoners. They can't observe everyday occurrences like "the man next door cutting the grass or the dog running circles in the yard". Ms. Leto stressed that her neighbors love the attention from the children, and the children love the attention from her neighbors. She emphasized that her home is well-maintained and aesthetically pleasing to the neighborhood. They shovel their snow

in the winter, cut their grass in the summer, put up Christmas lights and decorations, and she maintains a very “homey” atmosphere in the inside as well. She explained that she does not want to be “shut down” and she wants the children to be able to continue to come to her home. At the very least, she would like an extension. She pointed out that there is a lot of uncertainty in the economy, and they have been trying as hard as possible to maintain the same costs and not pass on any increases to their clients.

Mr. Sam Leto, 38235 John P, Clinton Township, Michigan 48036, explained he and his wife are licensed by the State of Michigan for the group day care in their home. He was aware that emotions run high on both sides of this issue, but he urged everyone to be reasonable. He stated they have unconditionally loved all of the children in their care, and consider them an extension of their immediate family. The children address them as “Grandma and Papa”. Some of these have been long-term relationships, and their home is always open. They have tried to keep their rates stable and have lost some clients due to the economy and loss of jobs, but they stay in touch with them to let them know they are missed. He added that they hope to see them again when the economy turns around. The majority of their clients come to them based on referrals. The parents have commented that they like the openness of the fence now and would not like to see it replaced with a solid vinyl fence. He noted that the children like the interaction with the neighbors, and he felt it will look like a prison if it is enclosed.

Mr. Jack Murphy, 38010 John P, Clinton Township, Michigan 48036, homeowner on the corner, stated he is 81 years of age and does not have any children in daycare; however, he has six children and 15 grandchildren. He has resided in Clinton Township for 26 years, following residency in St. Clair Shores, then Frankenmuth. He has an in-ground swimming pool in his rear yard, so he has a board-on-board stockade fence around his entire yard. In the 26 years at this location, his children, grandchildren and many other friends have enjoyed the pool and yard, and he stressed they have never had any kind of accident. He noted that there is always an adult outside when there are children in the yard, and he could not recall any of them getting slivers off of his wood fence. He felt the wood fence, with its different color variations, is more attractive than a solid vinyl fence, and he compared the appearance of his yard in the summer to that of a park. Mr. Murphy stated he drove to two commercial daycare centers, one located on Clinton River Road, east of Garfield, and the other on Utica Road, across from the Plumbrook Golf Course. The daycare on Clinton River Road has a large parking lot where the children play, and there is no fence. The daycare on Utica Road had a fenced-in area for the children to play, constructed of scalloped vinyl fencing 4 feet in height.

Mr. Murphy stated the first time he became aware of the Leto’s daycare was when he was in front of his home and saw a group of children walking hand-in-hand with Mr. Leto. Mr. Leto told the children to say “Good morning, Mr. Murphy”, which they all did. After a short conversation, they all said, “Goodbye, Mr. Murphy”. He stated they take daily walks, and Mr. Leto always chooses a route where the children will not have to walk uphill. Mr. Murphy felt that “children should be seen and heard”, for safety reasons. He stressed the Leto’s do not operate a “latch key service” but a daycare, where the children are loved and taught. To force them to install a 6-foot wall will seem like a prison wall to these small children. He felt it is the

ugliest thing anyone could look at and does not do anyone any good. He commented that if the Township feels a vinyl fence is necessary, it should be four feet in height, not 6 feet.

Mr. Marella clarified that the issue is not whether or not the children receive loving care from the Leto's, but the question is strictly limited to the fence. He was confident that Mr. and Mrs. Leto are very kind and loving to the children, but the discussion tonight needs to be limited to the fence.

Ms. Desiree Novak, 20077 White Oaks, Clinton Township, Michigan 48036, stated that, in some ways, she indirectly caused this ordinance to go into effect. Soon after she moved to this location, this ordinance "popped up" because some of her neighbors were in opposition to her in-home daycare. Ms. Novak stressed she is here tonight to support Ms. Leto in her request for a variance, because she felt the ordinance is very unfair and unjust. She expressed happiness that the Leto's have neighbors who support her day care and do not want to see the kids "locked up in this prison". She admitted being a little resentful and angry because she is the only one of the 19 licensed group home caregivers who has this fence. She understood that licensed group home providers were sent letters advising of this new ordinance, but Ms. Leto is the only one who responded to it. Ms. Novak explained that she has been doing day care for ten years, five of those years in Clinton Township. She acknowledged the fact that some of her neighbors may still not be happy that she is there, but she now has the 6-foot-high vinyl fence required by the Township. She added that, although the 6-foot-high fence keeps the children "hidden", she has the added advantage of not having to look at her neighbors. She could see, however, that there are safety issues involved with having such a high fence. When a parent comes into the rear yard through the gate, she inquired as to what would happen if a child happened to sneak out through that gate without being seen. That child would then be outside the yard and completely out of the site of the caregiver. She added that if this had been a 4-foot cyclone fence, that child would be spotted immediately and could be brought back to safety. She felt she was unjustly treated by the Township and admitted feeling that, since she was required to put in the fence, then everyone should have to do the same; yet, she did not feel it is a fair ordinance and stressed that, although it is a difficult thing for her to do, she considers herself a Christian and she is urging this Board to grant the variance. She added that she cannot get back the \$12,000 she paid for the fence that was required by this Township. Ms. Novak pointed out the state says that townships "can" take on these requirements for fences, but are not required to do so. She has done research and pointed out that every other township in the State of Michigan that has specified requirements only requires that fencing is necessary but there are no restrictions as to the type of fence.

Ms. Justina Dixon, 4791 Liberty, Sterling Heights, Michigan, coordinator from Macomb County Child Care Providers Association, explained that she is active on the state level with licensed daycare providers, and she noted that there are 19 licensed group daycare home providers in the Township, not 12 as referred to by Mr. Santia. When she talked with Mr. Jim Sinnamon, who is the head of licensing, he felt the fence ordinance in the Township is "overkill", and they are working on language in their regulations that will prohibit this from happening in other communities. She felt this is too much of a hardship on licensed caregivers and forcing them to spend money on such a fence at this time is "ridiculous". She explained that, as a licensed group daycare home, she was not required by the state to have a fence because she lived directly across

the street from a city park and was able to take her children over there to play. She recalled an instance where the state required a Macomb Township caregiver to put up a fence along the rear of her property because the home backed up to Tilch, which the state determined was a busy road. She emphasized that the state looks at each individual case and would definitely require a fence if they felt it was necessary. She works with the Grand Rapids Urban League, which is a food program for daycares. She claimed that some of the residents are getting around the Clinton Township ordinance by doing such things as putting the required 6-foot-high vinyl fencing around a small 4' by 8' "play area", rather than around their entire yard. This results in children playing in a tiny cubicle area rather than an entire backyard.

Mr. Santia noted that, according to the state's website, there are 12 licensed group daycare homes in the Township, and all twelve of those owners received a letter informing them of the ordinance requirements.

Ms. Dixon claimed that the list on the website is "hit and miss", but she accused the Township of "not doing their homework" because there are 19 licensed group daycare home providers.

Mr. Marella clarified that only owners and/or occupants within 300 feet of this subject parcel were notified about tonight's public hearing.

Ms. Dixon emphasized that she was not referring to tonight's public hearing, but rather the meetings that led up to the Township's adoption of the ordinance requiring the fencing.

Mr. Santia stated that he talked with Mr. Sinnamon and was led to believe that the information on the state's website was accurate, which is the reason the twelve letters were sent out informing of the change in the ordinance. He added that, now that it has come to his attention that there are actually more licensed caregivers than what are included on the website, he will address the issue.

Ms. Lori Sullivan, 18445 Matthew, Clinton Township, Michigan 48035, stated she has been a licensed in-home daycare provider for 26 years. She has had no problems, and has had a cyclone fence for all of these years. She has talked with her immediate neighbors on both sides, and both of them, although they stressed they have no objection to the day care, would not want the 6' vinyl fence. She discussed this with her licensing contact person, who advised her to wait until she receives a letter before doing anything. She added that she has not received a letter. Her contact also informed her that Clinton Township has the strictest fencing requirements of any other community in the area. Ms. Sullivan stressed that her children are not allowed to climb the fence, and if a ball or other toy ends up on the other side of the fence, her neighbors return it later. She has had no problems, and did not feel the fence ordinance was truly investigated prior to being implemented. She felt that if it was originated based on a "neighbor issue", that should have been tended to separately, but enacting such a township-wide ordinance is not the answer.

Ms. Novak commented that noise is also an issue with the 6-foot vinyl fence. They have two dogs, and when the dogs bark, the noise is amplified like a megaphone as it bounces around between the fences. She added that the voices of the children echo in much the same way, and

now the neighbors are complaining about that. She felt that these repercussions are something else that should be taken into consideration when requiring residents to install these 6-foot-high fences.

Mr. Nickerson commented that the residents who have spoken tonight are addressing their complaints as though this Board was responsible for adopting the fence ordinance. He stressed they had nothing to do with creating it, but it was the Board of Trustees, along with the Township's legal counsel. If an individual wants to seek a variance, they come to this Board, and if the request meets the criteria by which this Board can act, then this Board can approve that request: if the criteria is not met, then this Board is required to deny the request. He stated he has nine grandchildren, ages 3 to 17, and he admitted that many valid arguments have been presented tonight, but to the wrong audience. He felt the issue should be taken up with the Board of Trustees. He recalled the issue on White Oaks because he felt it would end up in front of the Board of Appeals, but he pointed out that the state statute clearly states that the Township has to come up with a fence ordinance. Whether it was properly researched or thought out would be a question to be addressed to the Township Board. He also noted that Mr. Santia is the Director of the Department of Planning and Community Development and does what the Township Board directs him to do. Mr. Nickerson felt Mr. Santia did his best with the information he was given. He did not see where this Board, given the statutes under which it can operate, can grant this variance because he has not heard one condition that would allow them to do so.

Mr. Santia clarified that Mr. and Mrs. Leto were doing what they were asked to do when they received the letter advising them of the ordinance. According to the ordinance, each group daycare operator must obtain a "Special Land Use Permit", and as their license expires, they are told to come in and apply for this permit, get an inspection of their facility and obtain the permit from the Building Department.

Mr. Nickerson inquired as to whether this could be postponed for a period of time, possibly even six months, so this could go back to the Ordinance Update Committee and Township Board for review. He questioned as to whether a postponement of this would hold the Building Department in abeyance from taking any further action against the Leto's.

Mr. Marella replied that if the matter is postponed, the Building Department will not take further action until the matter comes back to this Board for a vote. He agreed with Mr. Nickerson that this would give everyone an opportunity to work this out. If this Board denies the request tonight, it could cause more problems for the Leto's.

Mr. Campbell agreed with postponing action for a six-month period, and although he did not read all of the letters word-for-word, he noticed some very good points raised that he felt need to be evaluated by the Township Board. He was confident that, while the intent of the ordinance was to provide greater security for the children, he felt a chain-link fence may actually provide the greater security. He observed that the majority of the letters, especially from the neighbors, indicated they do not want to look at a 6-foot vinyl fence. He recalled at one time, if someone wanted a fence taller than six feet, they would have to obtain a special permit and present signatures from the abutting property owners, indicating they had no objection. It was not part of

the fence ordinance but he considered it a “good neighborly-type policy”. Mr. Campbell also noted that a couple of the letter writers commented that there is a higher ratio of adults to children in home daycares than in schools, and yet schools are allowed to have chain link fences.

Mr. D’Angelo agreed with Mr. Nickerson’s suggestion of postponing further consideration of this variance request for six months so it can be looked at by the Ordinance Update Committee and the Township Board.

Mr. Campbell noted that six months would be in August, and for the interest of making sure this does not interfere with summer vacations, he recommending postponing it for seven months. That way, it will be brought back before this Board in September.

Mr. Marella recalled that when the Township ordinance was changed to regulate “massage parlors”, they were able to come up with an ordinance that legitimized those who were licensed by the state, yet it put a stop to those operating their business illegitimately under the auspice of “massage parlor”. They invited those who were operating legitimate therapeutic massage institutions to provide input as the ordinance was being created, and when the ordinance was adopted, everyone was satisfied. He felt the same thing can be done in this case.

Motion by Mr. D’Angelo, supported by Mr. Nickerson, with reference to File #6318 and application from Ms. Sandra J. Leto, 38235 John P, Clinton Township, Michigan 48036, for variance to Clinton Township Planning and Zoning Code, Chapter 1258.02-(q)-(2), Principal Uses Permitted, Group Daycare Homes, Fencing Requirements, concerning Lot 34, Moravian Acres Subdivision (Section 21), generally located fronting the west line of John P, north of Ciela, addressed as 38235 John P, that further consideration of request for variance to permit continued operation of an existing group daycare home at 38235 John P Street in the R-2 One-Family Residential District, without installing the required vinyl fence, be postponed for seven (7) months, to be brought back before this Board on Wednesday, September 16<sup>th</sup>, 2009 at 6:30 p.m.; further, this will provide an opportunity for the ordinance to be addressed by the Ordinance Update Committee and/or the Township Board. Roll Call Vote: Ayes – D’Angelo, Nickerson, Campbell, Deyak, Edgar, Trombley, Marella. Nays – None. Absent – None. Motion carried.

Mr. Marella replied to inquiry from some of the interested citizens present that notification of the continued public hearing in September will be re-issued to owners and/or occupants of property located within 300 feet of the property in question. He added that, generally when a matter is postponed to a specific date, re-notification by mail is not required; however, due to the length of time involved, he felt it would be best to send out notification once again.

**8.6917 ACRES OF LAND FRONTING THE SOUTH LINE OF HALL ROAD (M-59),  
WEST OF GROESBECK (SECTION 2)**

-- **APPEAL: 22800 HALL ROAD**

**FILE #6325: PETITIONED BY MARK MALLOY, ALL SEASONS SUNROOMS  
REPRESENTED BY RANDALL KARAM P.C.**

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Pertinent correspondence was read and entered into the record. Mr. Campbell advised that notice of this public hearing was issued by regular mail to 35 owners and/or occupants of property located within 300 feet of the land in question, with 4 of those returned as undeliverable. He added that there were no letters received in response to the mailing.

Mr. Randall Karam, attorney representing the petitioner, 22800 Hall Road, Clinton Township, Michigan 48038, stated that the petitioner has been in this business for 23 years. He recently moved into a new facility and the purpose of the request is to allow him to put up a wall sign on the building which identifies his location. Mr. Karam reviewed that the ordinance provides that in the OS-1 and OS-2 Districts, only one (1) wall sign is permitted. They are seeking a variance to allow the second wall sign. He pointed out that, with the depressed economy, the petitioner is trying to expand a viable business. He noted that Hall Road is a high-traffic area and the motorists are traveling at relatively high speeds. He also pointed out that the area is mainly surrounding by industrial developments, and there is very little in the way of residential in the immediate area. Mr. Karam did not believe the granting of this variance would cause undue hardship on any of the surrounding property owners or that strict enforcement of the ordinance in this case would serve any purpose. He added that it would not create a risk to public health, safety and welfare. Mr. Karam explained that the pylon sign is shared by all tenants of the building and is too small to provide any exposure for the cars traveling at such high speeds at that point on Hall Road.

Mr. Nickerson questioned why the petitioner felt placing a sign on the north wall would help. He pointed out that motorists traveling westbound on Hall Road are at least 250 feet from the building, so the sign would not be visible to them.

Mr. Karam felt Mr. Nickerson's question was reasonable, but he pointed out that there are traffic devices in that area that break up the traffic flow so the sign would have a material benefit to the applicant. He felt "every little bit helps" in this economy. They are trying to hire more employees and are gearing up for the state initiatives in making homes more energy efficient. He advised that they made an error on their application and clarified that the basis for the variance request is not self-created, pointing out that a lot of retail users are migrating toward office space. Mr. Karam stated that the petitioner will be storing materials on site and running his retail from the same site, therefore eliminating the need for two facilities. He estimated that the building sits approximately 100 feet back from the road.

Mr. Campbell felt that the majority of the year, the proposed sign location will be hidden by trees, and he did not want to see trees pruned for business signs. He appreciated their economic situation and what they were trying to do, but he did not hear anything unique that would warrant



the granting of this variance. He expressed concern that if this is approved, tenants of other office spaces will be coming forward asking for an additional 40 square feet each for their signs.

Mr. Karam explained that this building was occupied by a single tenant, and since their demise, it is now occupied by an insurance agent, a mattress company and this business. He did not feel it will open a floodgate of requests. He noted that it is part retail, part office and part industrial, which is what attracted his client to this location.

Mr. Campbell felt there would be more visibility if they replaced the “Foam Factory” pylon sign with a sign listing the current tenants.

Mr. Karam stated if they owned the building, they would not be requesting the variance tonight. They discussed this possibility with the owner of the building, who informed them he was not interested in that option. Mr. Karam explained that his client made attempts to arrange alternate signage, but this is basically a building with an office frontage but an industrial back. His client liked the location because of being on Hall Road and having 75,000 cars pass by each day, but he felt his sign is small, especially when considering the speed of the motorists on Hall Road.

Mr. Nickerson inquired as to whether the building owner should be addressing this issue since the building is “somewhat of a hybrid”. He felt the building owner should come before this board and ask for a certain type of sign so that everyone in the building can be included on it. He did not feel it would be advantageous for the Board of Appeals to grant the variance as requested because of the possibility of all future tenants of this building wanting to add another wall sign to advertise their particular business.

Mr. Santia replied that is something that could be looked at. He did not know the size of the existing lawn sign, but the owner could come in with a specific design to accommodate all of their possible tenants to give them each a certain amount of space on a lawn sign.

Mr. Karam compared this building to “a small island of office in the middle of heavy industrial”.

Mr. Campbell agreed with Mr. Nickerson and felt that one lawn sign with the tenants listed will give everyone in the building more visibility.

Mr. Deyak agreed with his colleagues. He felt the tenants of the building, as well as the community, would be better served to have something more like a monument sign rather than an excessive amount of signage on the front of the building. He likened Hall Road to a freeway and felt the lawn sign would be more effective.

Mr. Campbell suggested postponing action on this item so the petitioner can ask the owner of the building to come back.

Mr. Nickerson agreed and felt the petitioner should be able to bring the owner to the next meeting.

Mr. Karam did not feel that would be a problem.

Motion by Mr. Deyak, supported by Mr. D'Angelo, with reference to File #6325 and application from Mr. Mark Malloy, All Seasons Sunrooms, 23519 Lakepointe Drive, Clinton Township, Michigan 48036, as represented by Mr. Randall Karam, Randall Karam P.C., 53271 Pine Ridge Drive, New Baltimore, Michigan 48051, for variance to Clinton Township Building and Housing Code, Chapter 1488-(e)-(5), Definitions and Restrictions, Business signs, concerning 8.69 acres located fronting the south line of Hall Road, west of Groesbeck Highway, at 22800 Hall Road, that further consideration of request for variance to permit an addition to an existing wall sign for a business in the OS-1 Office/Service District (All Seasons Sunrooms), creating an eighty (80) square foot sign, being forty (40) square feet in excess of the maximum permitted forty (40) square feet, be postponed for thirty (30) days so the petitioner can bring the owner to the next meeting to discuss sign possibilities for the subject building. Roll Call Vote: Ayes – Deyak, D'Angelo, Edgar, Nickerson, Trombley, Campbell, Marella. Nays – None. Absent – None. Motion carried.

Mr. Marella advised Mr. Karam to notify Mr. Santia with plenty of advance notice if the owner of the building is not able to attend the next meeting.

Mr. Karam assured he would do that.

The meeting recessed at 7:51 p.m. and reconvened at 8:01 p.m.

**1.12 (PART OF 27.56) ACRES OF LAND FRONTING THE WEST LINE OF GRATIOT AVENUE (M-3), NORTH OF 15 MILE ROAD (SECTION 27)**

-- **APPEAL: FIFTH THIRD BANK @ REGIONAL SHOPPING CENTER**  
**FILE #6326: PETTIONED BY JEFF JACOBS, CB RICHARD ELLIS**  
**REPRESENTED BY JOHN KAUPPILA, ATWELL-HICKS**

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Pertinent correspondence was read and entered into the record. Mr. Campbell advised that notice of this public hearing was issued by regular mail to 279 owners and/or occupants of property located within 300 feet of the land in question, with 41 of those returned as undeliverable. He added that there were no written responses to the mailing.

Mr. Jeff Wagner, of Fifth Third Bank, 1000 Town Center, Southfield, Michigan, explained that they came before this Board a few months ago with a similar request for a different parcel. They have been working with the Regional Shopping Center, in tandem with Lowe's, in an attempt to acquire property at this location. They originally approached Regional Shopping Center regarding property between Old Country Buffet and the entrance to Lowe's; however, they were not able to work that out at the time because the owner was not able to secure all of the necessary approvals from his tenants, which is required in their leasing agreements. They then switched the parcel in front of Lowe's and came before this Board. They were granted the variance; however, during that time frame, Regional Shopping center worked it out and asked Lowe's to release Fifth Third from the deal, which they did. They are seeking a variance for the front yard setback,

as well as a variance to the vehicle stacking requirements for the drive-thru lanes. Mr. Wagner explained that they are restricted by Gratiot to the east and the main traffic aisle for the shopping center on the west. They have minimized their development as much as possible in the east/west direction, including reducing the number of stacking lanes from 5 to 4. After making those reductions, they are still slightly over 9 feet short of meeting the required landscaped setback off of Gratiot. If they reconfigure the parking, they lose too much to accommodate their customers. He noted that what they are proposing is consistent with what currently exists at the shopping center. Mr. Wagner advised that they are also seeking a variance for the stacking lanes. The ordinance requires them to provide room for 8 cars in each lane, and they are asking for a variance to allow them to provide room for 4 cars in each lane. To provide more require them to sacrifice a significant number of their parking spaces, which would then render the parcel unusable for them. He stressed that they have never encountered a situation at any of their facilities where there would be 8 cars stacked in all of the lanes at once. He explained that customers would never wait that long in a car line to be serviced and they would either park and go in or come back at another time. Mr. Wagner stated that two additional items were addressed in their site plan review, and they will be added to the plans before it goes to the Township Board. One is the 30-inch masonry wall to be installed along Gratiot, and the other is the 12 additional trees along Gratiot and one more parking lot tree. He assured they will meet these requirements.

Mr. Campbell stated that he has no problem with granting a variance for the number of stacking spaces but he has difficulty understanding the reason for the landscaped setback variance.

Mr. Wagner explained that if they move the building back to accommodate the setback requirements, they would be removing the main north/south circulation lane in the parking lot. He replied that they could possibly purchase a little more land to accommodate this requirement, but it would not solve the problem of having to relocate the north/south circulation lane, thereby causing confusion for drivers.

Mr. Campbell claimed he looked at the aerial and it does not appear as though the north/south circulation lane is continuous north of Old Country Buffet.

Mr. Wagner maintained that there is an existing lane going north/south and it does not “jog” behind Old Country Buffet. He added that they would also have to petition Regional Shopping Center to purchase additional land.

Mr. Campbell did not feel that by creating the “jog”, they would be removing a big travel lane for the shopping center, because according to the aerial, it does not exist beyond Old Country Buffet. He explained that when Lowe’s developed at this site, they met the current landscaped setback requirement of 25 feet. He felt to continue with that setback would be desirable, and he inquired as to whether the bank could reduce to three drive-thru lanes if they cannot purchase the additional land.

Mr. Wagner replied that their standard is five lanes and they have already reduced it to four. He mentioned that TCF Bank has a standard of six lanes. He inquired as to whether it would be

appropriate to withdraw the request for the front yard setback at this time if it is going to be a problem with getting their plans approved.

Mr. Campbell advised that if they are denied, they can ask for reconsideration at a later date.

Mr. Wagner stressed he does not want to “close the door” on this request..

Mr. Campbell expressed his opinion that he would prefer to deny the landscaped setback variance request, and if the petitioners come up with new information, they can come back and ask for reconsideration.

Mr. Dave Jackson, owner of Laser’s Edge, another business located in the Regional Shopping Center, urged the Board to grant the landscaped setback request. He noted that if they are forced to relocate a portion of the north/south circulation lane, it will impede traffic flow and make it harder for all of the businesses in the shopping center. He stated he is there every day and is very aware of how the traffic moves on the site. Mr. Jackson stressed they want Fifth Third at this location because it will draw business to the center, so he requested the Board do everything possible to make sure they can go forward with their plans.

Mr. D’Angelo stated he does not want to delay construction. He felt they need resolution to this issue tonight.

Mr. Nickerson inquired as to whether the Downtown Development Authority (DDA) has given an opinion on this.

Mr. Santia replied that the DDA is very supportive of the plan.

Mr. Wagner replied to inquiry that any delay at this level will throw them off schedule, so there would be an issue of time.

Motion by Mr. D’Angelo, supported by Mr. Deyak, with reference to File #6326 and application from Mr. Jeff Jacobs, CB Richard Ellis, 111 Lyon Street, Grand Rapids, Michigan 49503, as represented by Mr. John Kauppila, Atwell-Hicks, 50182 Schoenherr Road, Shelby Township, Michigan 48315, for variance to Clinton Township Planning and Zoning Code, Chapter 1296.01-(4), Space Requirements, Off-Street Parking and Loading; and Chapter 1292.01-(p), Land Use Regulations, Landscape Setback Requirements for the B-2 District, concerning 1.12 (part of 27.56) acres of land fronting the west line of Gratiot Avenue, north of 15 Mile Road (Section 27), addressed as 35335 South Gratiot Avenue, that variance be granted to permit construction of a Fifth-Third Bank in the B-2 Community Business District with: 1) Four (4) waiting spaces for each drive-up window or machine, being four (4) waiting spaces less than the minimum required eight (8) spaces per drive-up window or machine; and 2) Landscape setback between the off-street parking and the Gratiot Avenue right-of-way of 15.7 feet being 9.3 feet less than the minimum required 25 feet; further, this grant of variance is based on claimed practical difficulties being: 1) The layout of the land, considering the current north/south traffic flow at Regional Shopping Center and the close proximity of Old Country Buffet, and the main traffic pattern of

the center would be disrupted if the variance was not granted; and 2) The current practice that banks do not need more than four stacking spaces per lane; further, this grant of variance is contingent upon compliance with all other requirements of Township ordinances. Roll Call Vote: Ayes – D’Angelo, Deyak, Edgar, Nickerson, Trombley, Marella. Nays – Campbell. Absent – None. Motion carried.

**LOT 895, INGLESIDE FARMS SUBDIVISION (SECTION 22) [FRONTING THE NORTH LINE OF ULRICH, WEST OF MULBERRY]**

-- **APPEAL: SFR – ULRICH, 21725**

**FILE #6329: PETITIONED BY SHELLY ECKELBERRY**

**REPRESENTED BY MAIA JOHNSON, STERLING HOMES LLC**

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Pertinent correspondence was read and entered into the record. Mr. Campbell advised that notice of this public hearing was issued by regular mail to 37 owners and/or occupants of property located within 300 feet of the land in question, with 2 of those returned as undeliverable. He added that there were no written responses to the mailing.

Ms. Shelley Eckelberry, 21725 Ulrich, Clinton Township, Michigan 48036, and her representative, Ms. Maia Johnson, were present and offered to answer questions.

Ms. Johnson explained that Ms. Eckelberry is proposing to add a garage to the front because the existing house is positioned close enough to each side yard setback that there is no room for vehicular access to the rear yard. Adding the garage to the front, however, will leave about nine feet less than the minimum required setback of twenty-five feet. Ms. Johnson pointed out that the majority of the subdivision has 60-foot road rights-of-way but when this subdivision was platted in the 1920’s or 1930’s, they reserved an 86-foot road right of way on Ulrich. There are homes on both sides of the street, so she did not know the purpose of the wider road right-of-way. Ms. Johnson pointed out that, even with the addition of the garage in front, there would still be a 62-foot distance from the driveway to the edge of the road, and she emphasized that this garage would be in compliance if the road had a uniform right-of-way width with the remainder of the subdivision. She admitted that the existing home can be used in compliance with the ordinance; however, there is no basement, no storage and has only a very small one-car garage that does not accommodate the petitioner’s vehicle; therefore, she is not able to use her home to its full potential. She pointed out that it is not a self-created hardship because the property lines and rights-of-way were established when the subdivision was originally platted many years ago. She also stressed that this same garage would be permitted on any other street in the subdivision where the right-of-way is 60 feet. Ms. Johnson felt it will not deter from the neighborhood, and the neighbors have no objection. She felt it will give more dimension to the exterior of the home, and Ms. Eckelberry is hoping to add a porch as well, although she mentioned that would be in compliance with the ordinance and does not need a variance.

Ms. Eckelberry stated she talked with her neighbors on the side where the garage will be located, and they were happy to hear about it. She stated she owns an SUV and cannot fit it into the existing garage, which was not designed for larger vehicles. She explained that she would like

the added comfort knowing she will be pulling into a secured garage and can enter the house that way.

Mr. Campbell inquired as to what Ms. Eckelberry proposes to do with the existing garage.

Ms. Johnson replied that they intend to absorb it into the back of the new two-car garage and use it as storage.

Mr. Campbell inquired as to why they are proposing a garage with a depth of 24 feet.

Ms. Johnson replied that 24-feet is standard depth for a two-car garage so there is room to separate the garage floor from the house floor.

Mr. Campbell stated the homes in his subdivision were constructed with a 21-foot depth garage design. He did not feel the additional depth may be needed, especially in this case because the petitioner is proposing to use the existing garage space for storage. He felt it will project quite far forward compared to the other homes in the area. He suggested a 20-foot by 21-foot or 20-foot by 22-foot garage, which could meet the petitioner's needs but be less expensive to build and would encroach less into the setback requirements.

Mr. Nickerson stated he had no objection to the variance as requested.

Motion by Mr. Nickerson, supported by Ms. Trombley, with reference to File #6329 and application from Ms. Shelley Eckelberry, 21725 Ulrich, Clinton Township, Michigan 48036, as represented by Ms. Maia Johnson, Sterling Homes LLC, 2912 Tipsico Lake Road, Hartland, Michigan 48353, for variance to Clinton Township Planning and Zoning Code, Chapter 1292.01, Schedule of Regulations Limiting Height, Bulk, Density and Area; Chart, Minimum Front Yard Setback Requirements in the R-3 One-Family Residential District, concerning Lot 895, Ingleside Farms Subdivision (Section 22), generally located fronting the north line of Ulrich, west of Mulberry, addressed as 21725 Ulrich, that variance be granted to permit construction of an attached garage to a single-family home in the R-3 One-Family Residential District with front yard setback of sixteen (16) feet being nine (9) feet less than the minimum required twenty-five (25) feet; further, this grant of variance is based on claimed practical difficulty that the unusual width of the road right-of-way has created a problem for the petitioner; further, this grant of variance is contingent upon compliance with all other requirements of Township ordinances. Roll Call Vote: Ayes – Nickerson, Trombley, Edgar, Deyak, D'Angelo, Campbell, Marella. Nays – None. Absent – None. Motion carried.

**2.636 ACRES OF LAND FRONTING THE EAST LINE OF ELIZABETH ROAD,  
SOUTH OF STARKS (SECTION 2)**

**- REF. APPEAL: ACTION BAIL BONDS**

**-- REQUEST FOR RECONSIDERATION**

**FILE #6310: PETITIONED BY WALT MYSKA, ACTION BAIL BONDS  
REPRESENTED BY SIGN FABRICATORS**

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Mr. Campbell noted that this is a request for reconsideration.

Mr. Walt Myska distributed photographs taken of his site during the summer months, showing that the full-size trees block the signage that he is allowed. He would like reconsideration by this Board to allow some type of signage on the other side of the building. He admitted there is no problem with visibility at this time of the year; however, the busiest time of the year for him is during the summer and that is when the trees are full of leaves, completely blocking the sign to motorists traveling southbound on Elizabeth or westbound on Dunham. Mr. Myska stated he has some signage in the window but they are not easily visible because of the fact that the building is situated far back off of Dunham.

Mr. Marella noted that the petitioner has signs in the windows that face Dunham and the county jail.

Mr. Myska clarified that they are visible at night but cannot be seen during the day. He complained that motorists cannot see any signage until they are five feet from the driveway. He was concerned because these trees will continue to grow and the situation will only worsen as time goes on.

Mr. Nickerson stated he was not present when this matter was discussed in November, but he recalled at least two other bail bond companies in this immediate area, and he felt if this variance is granted, it will “open a can of worms”. He did not know how they could deny others for the same request.

Mr. Myska replied that the way his building is situated is different from that of his competitors.

Mr. Nickerson felt that has no bearing and he felt if they hear that this variance was granted, they will “be in next week asking for a similar variance”.

Mr. Marella did not feel any new documentation has been presented that would warrant a reconsideration hearing.

Mr. Myska disagreed and felt the photographs during the summer months depict a new aspect of the request.

Mr. Campbell noted that they have heard this case twice: once in September or October and the sign company's representative was present but could not answer questions. They heard it again in November when the petitioner was present. He did not feel anything new has been added.

Mr. Mike DeMaria, employee of Action Bail Bonds, claimed that their competitor, Ability Bail Bonds, has a sign "covering half of their building".

Mr. Marella stated if they have a sign covering half of their building, they most likely did not get a permit and are in violation.

Mr. Santia assured that he will refer this information to the Building Department so they can go and check it out.

Mr. Marella added that if they are in violation, they will either have to take their sign down or come before this Board to request a variance.

Mr. Campbell pointed out that the petitioner would be permitted to move his one authorized sign to the other side of the building if he feels it is ineffective because it is blocked by the trees.

Mr. Myska complained that if he does not have some identification on both sides of his building, he is going to lose visibility. He further complained that this Board did not provide him with any options or compromises, similar to what he felt the Board did with the other applicants.

Mr. Campbell pointed out that, regardless of how many wall signs they approve, there would still be a visibility issue because of the trees.

Mr. Myska pointed out that the trees are the exact reason why he has a hardship and his situation is different from the others in the area.

Mr. Campbell cautioned that scrolling is not permitted on the changeable copy signs, and the frequency of the message change cannot be less than 1.5 seconds.

Motion by Mr. Campbell, supported by Mr. D'Angelo, with reference to File #6310 and request from Mr. Walt Myska, Action Bail Bonds, 43600 Elizabeth Road, Clinton Township, Michigan 48036, for reconsideration of the decision made by the Board of Appeals at their meeting on November 19, 2008, in which they denied a request for variance to Clinton Township Building and Housing Code, Chapter 1488.02-(e)-(6)-C, Signs, Definitions and Restrictions; Wall Signs, concerning 2.636 acres of land fronting the east line of Elizabeth Road, south of Starks Drive (Section 2), to permit installation of two (2) wall signs for an existing business in the I-1 Light Industrial District (Action Bail Bonds), abutting a road with right-of-way of 120 feet (Elizabeth Road), being one (1) wall sign in excess of the maximum permitted one (1) wall sign, that the request for a reconsideration hearing be denied and that this denial is based on the fact that there has not been enough new information presented that would justify a reconsideration. Roll Call Vote: Ayes – Campbell, D'Angelo, Deyak, Edgar, Nickerson, Trombley, Marella. Nays – None. Absent – None. Motion carried.



**CLINTON TOWNSHIP ZONING BOARD OF APPEALS**  
**-- APPROVAL OF 2008 ANNUAL REPORT**

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Motion by Mr. Deyak, supported by Mr. Nickerson, to approve the Clinton Township Board of Appeals 2008 Annual Report, as submitted, and to authorize the forwarding of this Report to the Township Board for their information and file. Motion carried.

**ELECTION OF OFFICERS**  
**-- CHAIRPERSON**  
**-- VICE-CHAIRPERSON**  
**-- SECRETARY**

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Mr. Nickerson nominated Mr. Frank Marella as Chairperson, Mr. James D'Angelo as Vice-Chairperson and Mr. Robert Campbell as Secretary to the Clinton Township Board of Appeals for 2009.

Motion by Mr. Deyak, supported by Mr. Nickerson, to close the nominations. Motion carried.

Mr. Marella, Mr. D'Angelo and Mr. Campbell all accepted the nominations to the positions of Chairperson, Vice-Chairperson and Secretary, respectively, and they were voted by acclamation to those positions for 2009.

**REPORTS OF MEETINGS**  
**-- APPROVAL OF DECEMBER 17<sup>TH</sup>, 2008 REPORT**

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Motion by Mr. Deyak, supported by Mr. Campbell, to approve the report of the December 17<sup>th</sup>, 2008 Board of Appeals Meeting as submitted. Roll Call Vote: Ayes - . Nays – None. Absent – None. Motion carried.

**CONFIRMATION OF NEXT MEETING'S AGENDA AND ATTENDANCE**  
**-- MEETING SCHEDULED FOR MARCH 18<sup>TH</sup>, 2009 AT 6:30 P.M.**

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Mr. Santia confirmed the next meeting of the Board of Appeals for **Wednesday, March 18<sup>th</sup>, 2009** at 6:30 p.m. He indicated that there is one application for an accessory structure, and four applications for signs, in addition to the item that was postponed from tonight to the next meeting.

## **ADJOURNMENT**

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Motion by Mr. Nickerson, supported by Mr. Deyak, to adjourn the meeting. Motion carried. The meeting adjourned at 8:45 p.m.

Respectfully submitted,

Robert M. Campbell, Secretary  
CLINTON TOWNSHIP BOARD OF APPEALS

ces:02/27/09

ces:03/02/09